IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WA.No. 1811 of 2006(B)

AGAINST THE JUDGEMENT IN WPC.11676/2006 Dated 04/07/2006
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APPELLANT: PETITIONER

DILIPKUMAR P.S.,
S/O.LATE KRISHNANKUTTY,
RESIDING AT 'SPRING VALLEY',
KALPATHY, PALAKKAD DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS:
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1. GOVERNMENT OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
HOME (F) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
PALAKKAD.

3. THE ADDITIONAL DISTRICT MAGISTRATE,
PALAKKAD.

BY GOVERNMENT PLEADER SRI T.B.HOOD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON 01/12/2006 DELIVERED THE FOLLOWING:

V.K.BALI, C.J. & P.R.RAMAN, J.

W.A.NO.1811 OF 2006

Dated this the 1st day of December, 2006

JUDGMENT

Raman,J.

This writ appeal arises out of the judgment of the learned Single Judge in W.P.(C).No.11676/2006. The appellant/petitioner sought to challenge Ext.P7 order by which the appellant's armoury licence was suspended pending disposal of the criminal cases pending against him. It was contended that there was no room for complaints against the petitioner until registration of the crime and that he had no role in the act constituting the criminal case pending. The criminal case registered is in respect of a forgery of a transport licence obtained by the petitioner for transporting of arms and ammunitions. The

allegation was that a Clerk in the office of respondents 2 and 3 forged the signature of the licencing authority to issue licence to the petitioner. It was only suspecting complicity of the petitioner also in the same, that the crime was registered. The learned Single Judge felt that it would be safe to trust the petitioner, in such circumstances, at least during the pendency of the criminal case and therefore, declined to grant the relief sought for against which the present writ appeal is preferred.

2. At the outset, we may state that the criminal case itself was launched on the alleged complicity of the petitioner and the allegation is that a transport permit was obtained from the office of respondents 2 and 3 forging the signature of the licensing authority to issue the licence. According to

the appellant/petitioner, he had no role in the alleged forgery and that could not have lead to the suspension of the licence during the pendency of the investigation and trial of the criminal case. During the course of argument, we asked the respondent-State as to whether but for the alleged forgery transport licence would have been issued and the petitioner will otherwise be entitled for the same, for which no satisfactory answer was forthcoming. Anyway, we are not going into the merits of the criminal case now pending, as the observation made in this appeal may prejudicially affect the right of the parties. Hence, we refrain from making any comments. However, merely because a criminal case is pending, whether the suspension of the licence as was done by Ext.P7 order is legally sustainable on the grounds stated therein,

arises for consideration.

3. Ext.P7 order was issued by the Government on a request made by the District Collector, Palakkad requesting suspension temporarily of the arms licence of the petitioner. It is stated in the order that "Government have examined the matter in detail and deems it necessary so as to avoid further malpractice, to suspend temporarily the arms licences Nos.31/XI/2004/Kerala, 32/XII/2004/Kerala and 33/XIV/2004/Kerala held by Sri P.S.Dilip Kumar, M/s.Malabar Armoury, Spring Valley, Kalpathy (PO), Palakkad District, as per Section l7 of sub sections 3 (b) and 3(d) of the Arms Act, 1959, until final disposal of the crime case charge sheeted". Section 17 (3)(b) and (d) reads as follows:

"17(3)- The licensing authority

> may by order in writing suspend a licence for such period as it thinks fit or revoke a licence --
>
> (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or
>
> (d) if any of the conditions of the licence has been contravened;.."

4. The specific ground stated in the impugned order, Ext.P7 is that it deems necessary to avoid further malpractice to suspend temporarily the arms licence issued to the petitioner. This is not one of the grounds on which the arms licence could be suspended. Admittedly, the Government was exercising a statutory power and therefore, when the statute has vested the power on the Government to suspend the licence only on the enumerated grounds therein, such power cannot be exercised on any other grounds.

5. We have no doubt in our mind that the specific reason for suspension of the licence is not one covered by the above provisions. If so, the order is liable to be quashed. We do so.

Appeal is thus allowed. The order of the learned Single Judge is set aside. No costs.

V.K.BALI,
CHIEF JUSTICE.

P.R.RAMAN,
JUDGE.

kcv.